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Remarks:

*Regarding the amendments to the claims:*

Kindly enter the foregoing indicated amendments to the claims without prejudice or traverse. The applicant expressly reserves their right to reinstate subject matter canceled by the present amendments at a later time, such as in the present application or in one or more further applications to be filed at a later date.

The applicant thanks the Examiner for the identification of allowable subject matter in the present *Office Action*; the applicant herein amends claim 19 in order that it is now presented as a new independent claim.

*Regarding the rejection of claims 34 and 35 under 35 USC 112, second paragraph:*

The amendments entered to claims 34 and 35 presented, *supra*, are believed to address and overcome the Examiner's rejection.

*Regarding the rejection of claim 6 under 35 USC 102(b) in view of US 3255117 to Knapp:*

The applicant respectfully traverses the rejection of claim 6 in view of the Knapp reference.

The applicant present amends claim 6 so that it now depends from claim 1. While Knapp discloses a low-foaming dishwashing detergent composition which may have pH which may "... vary considerably, as for example, from about 10 to 12." (Knapp, col. 4, lines 10 – 13), nowhere does Knapp disclose that his compositions feature different pH's following dissolution or dispersal into water, as is required of the limitations of claim 1 of which claim 6 depends.

Accordingly, reconsideration of, and withdrawal of the present rejection in view of the Knapp reference is solicited.

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*Regarding the rejection of claims 1-18, 22, 24-35 under 35 USC 103(a) in view of WO 00/04117 to Bennie:*

The applicant respectfully traverses the rejection of the foregoing claims in view of the Bennie reference.

Prior to discussing the Examiner's position on the putative relevance of the Bennie reference, the applicant points out that with regard to lodging a rejection based on obviousness section MPEP 2143 states that three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Further, unpatentability based on "anticipation" requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee"). Anticipation requires that a single reference describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art. See, *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). It is the applicant's view that these criteria are not met. Accordingly withdrawal of the grounds of rejection is deemed to be proper.

Turning to the Bennie document, it is the applicant's view that Bennie fails to suggest the presently claimed invention, and that the presently claimed invention is non-obvious over the Bennie reference. While the Examiner appears to have chosen to "pick-and-choose" amongst the various parts of the Bennie document in order to support the rejection, applicant contends that the Examiner's grounds of rejection is at, at best, a hindsight

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reconstruction, using applicant's claim as a template to reconstruct the invention by picking and choosing amongst the various parts of the Bennie document while ignoring important teachings and limitations of the Bennie document. This is impermissible under the law. For example, in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), the Federal Circuit stated:

"It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (quoting *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600)

It is the applicant's view that the limitations of the Bennie reference cannot be ignored and the presently claimed invention can only be construed by a "templating together" the applicant's presently claimed invention using the benefit of hindsight. Such is however impermissible.

While the Examiner suggests that a skilled artisan would find the Bennie document a resource in *suggesting* a composition as is now claimed, the applicant disagrees as the Bennie document fails to provide appropriate support or teaching to a skilled artisan wherein they might produce applicant's presently claimed invention.

Turning to Bennie, a key teaching—and limitation—of that document resides in its technical teaching concerning the change in pH of those compositions. More specifically Bennie recites:

"The multi-phase detergent tablets comprise two or more phases (additional phases sometimes being referred to herein as 'optional subsequent phases'), a first phase comprising an alkalizing agent and a second phase comprising an acidifying agent, the compositions, relative proportions and dissolution kinetics of the phases being preferably such as to provide an initial pH of at least about 9, more preferably at least about 9.3, and especially at least about 9.5, and a pH rate changes index (delta pH) of no more than

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about 0.17, preferably no more than about 0.16, more preferably no more than about 0.15, and especially no more than about 0.14 units/minute. The pH profile of the detergent tablets herein is generally measured in an automatic washing machine in the presence of a conventional soil load, the initial pH herein being taken to be the pH of the wash medium at 1 minute after the start of dissolution and the pH rate change index being taken to be the average pH change/minutes between 1 and 5 minutes. The multiphase tablets have generally rapid dissolution kinetics and are preferably formulated such that the second phase dissolves in a washing machine within 5 minutes.” (Bennie, pages 4-5).

Considering the above statement, it is quite clear by simple multiplication that even starting at the lowest pH of 9, and applying the maximum (delta pH) factor of 0.17/minute, that over the 5 minute interval when the multiphase tablets dissolve, the final pH is at best,  $9 - (5 * 0.17) = \text{pH of } 8.15$ . This is still an alkaline solution at best, and far from the final pH's presently claimed by the applicant.

The applicant points out that, with respect to the Examiner's remarks concerning the identity of the alkalizing agents and the acidifying agents that such may be considered as being out of context. Admittedly, with regard to these constituents Bennie teaches that: “The multi-phase detergent tablets comprise two or more phases, a first phase comprising an alkalizing agent and a second phase comprising an acidifying agent. Preferred alkalizing agents herein have a pH in 1% aqueous solution or dispersion (25 deg.C) of at least about 9, preferably at least about 10; preferred acidifying agents, on the other hand have a pH under similar conditions of less than about 6.5. Preferred alkalizing and acidifying agents are multi-functional, for example they can also have building or sequestering functionality.” (Bennie, page 11)

The applicant contends that the only relevance of the foregoing passage from Bennie is to suggest what types of individual alkalizing agents or acidifying agents may be used, and this has no relevance on the (delta pH) limitations which are taught by Bennie. Thus any such teaching as to “a pH under similar conditions of less than about 6.5” are properly

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limited to what Bennie actually says, namely that a useful acidifying agent should exhibit at a 1% aqueous concentration a pH of about 6.5 or less. Bennie does *not* indicate that the pH of the acidifying agent has any relation to the final pH of his two (or more) part composition. These would be understood by a skilled artisan to be quite different.

With respect to the dissolution profiles which Bennie teaches, Bennie recites at page 11 that:

"In the present invention it is preferred that the second and optional subsequent phase(s) dissolves before the first phase. According to the preferred weight ranges preferred described above, it is preferable that the first phase dissolves in from 5 to 20 minutes, more preferably from 10 to 15 minutes and the second and/or optional subsequent phases dissolve in less than 5 minutes, more preferably less than 4.5 minutes, most preferably less than 4 minutes." (Bennie, page 10)

From the foregoing, the and taking into consideration the facts that (i) Bennie's first phase comprises his alkalizing agent, (ii) his second phase comprises his acidifying agent, and that (iii) although his tablet preferably completely dissolves/dissipates in up to 5 minutes, but according to preferred weight ranges it is foreseen that the first phase may take up to 20 minutes to dissolve/dissipate but the second phase must dissolve/dissipate in not more than 5 minutes, it is nonetheless contended that the applicant's claimed compositions are both novel and nonobvious over the Bennie reference when said reference is properly considered. Bennie, in all instances specifically teaches that his tablet compositions are formed such that "...relative proportions and dissolution kinetics of the phases being preferably such as to provide an initial pH of at least about 9, more preferably at least about 9.3, and especially at least about 9.5, and a pH rate changes index (delta pH) of no more than about 0.17, preferably no more than about 0.16, more preferably no more than about 0.15, and especially no more than about 0.14 units/minute." Thus, according to preferred embodiments and in according to the applicant's calculation presented *supra*, the final pH of Bennie's compositions would under the factors most proximate to applicant's presently claim invention, still yield a

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final and alkaline pH of 8.15. Now, applying Bennie's teaching regarding his maximum (delta pH), applied to a tablet wherein (i) Bennie's first phase comprises his alkalizing agent, dissolves in 5 – 20 minutes while (ii) his second phase comprises his acidifying agent dissolves in up to 5 minutes, would be expected to yield a pH of 8.15 but likely greater (!). Such is expected as according to Bennie's preferred embodiments having such different dissolution profiles, while faster dissolving second phase may act to acidify the aqueous medium or bath in which it is dissolving or dissipating, the pH would rise as the slower dissolving first phase would supply the alkalizing agent to the aqueous medium or bath thus elevating the pH, likely even greater than that of the initial water pH, thus resulting in a final wash composition which is alkaline in character. Such a teaching is contrary to the applicant's presently claimed invention as Bennie teaches different dissolution profiles which are expected to result in only a small depression of pH based on an initial pH of 9 or more, or may as discussed immediately above result in an initial decrease in pH which is counteracted to result in a final wash composition which is alkaline in pH. This is also borne out by Bennie's "example" compositions wherein, at page 18 Bennie notes that with respect to his several tablets that " The resulting tablets dissolve or disintegrate in a washing machine as described above within 12 minutes, phase 2 of the tablets dissolving within 5 minutes. The initial pH of the compositions is in excess of 9.5 while (delta pH) is less than 0.14 units/minute.)" From the foregoing it is again quite clear that any reduction in pH from the initial pH occurs only while the "phase 2" of the tablets is dissolving within the initial 5 minutes, and thereafter as the "phase 1" continues to dissolve, the pH is expected to increase. From the foregoing data, the apparent minimum pH occurs at the end of the initial 5 minutes and based on the following simple calculation is expected to be:  $9.5 - (5 * 0.14) = \text{pH } 8.8$ , after which the pH is expected to increase.

From the foregoing discussion it is contended by the applicants that that the Bennie reference when considered in its entirety fails to teach or suggest the applicant's presently claimed invention. Bennie fails to teach or suggest a composition which exhibits a pH change even somewhat proximate to the order of magnitude provided by

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the present applicant, but rather, at best provides a composition wherein variations in pH are "buffered" so that they initially produce, and are maintained in an alkaline range.

In view of the foregoing it is respectfully requested that the outstanding rejection be withdrawn.

*Regarding the rejection of claim 23 under 35 USC 103(a) in view of WO 00/04117 to Bennie, in view of WO 00/06682 to Waschenbach:*

Whereas the Examiner introduces the Waschenbach reference as possibly suggesting an indicator which changes color on change of pH in the water, the applicant believes that the rejection should be withdrawn. For the reasons outlined *supra*, the applicant points out that the Bennie reference is improperly applied and the presently presented claims are properly patentable thereover. The introduction of Waschenbach does not address or overcome the inherent shortcomings and limitations of the Bennie reference; the combination of these two references at best may suggest adding a color change indicator to Bennie's compositions which are however distinguishable on other grounds. Further, as present claim 23 is dependant upon an independent claim which is believed to be patentable, the patentable nature of dependent claim 23 should properly be acknowledged.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

#### PETITION FOR A ONE-MONTH EXTENSION OF TIME

The applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

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CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

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28 March 2007

Date:

Certification of Telefax Transmission:

I hereby certify that this paper is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571 273-8300 on the date shown below:

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28 March 2007

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